

September 7, 2018

Mr. Nick Wilson
MK Consulting Engineers, LLC
3300 Clipper Mill Road, Suite 201
Baltimore, Maryland 21211

Re: Berkshire Elementary School Replacement
Forest Conservation Variance
DEPS Tracking Number 07-18-2774

Dear Mr. Wilson:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department on July 26, 2018, and proposes to remove 12 of the 16 isolated specimen trees on this approximately 14.9-acre property, which is an existing elementary school, and the subject of a proposed replacement school. The property is located in the Dundalk section of Baltimore County. It is immediately bounded by multi-family and single-family residences, and within close proximity to the intersections of North Point Road, Merritt Boulevard and Interstate 695.

The impacted trees are 10 White Oaks (*Quercus alba*) 31"-41"-diameter at breast height (DBH), 1 Northern Red Oak (*Quercus rubra*) 32" DBH, and 1 Scarlett Oak (*Quercus coccinea*) 41" DBH. All of these trees are in fair to good condition, with the exception the Scarlett Oak, which is in poor condition. Almost the entire site is within the limits of disturbance (LOD), where significant portions of the trees and their critical root zones (CRZ) are located within the LOD. On the southern portion of the property, Bread and Cheese Creek, a designated Use I stream, flows in an easterly direction. The stream and its buffer are outside of the LOD, and the specimen trees located within the buffer will remain undisturbed. No forest is found on site.

The Director of DEPS may grant a special variance from the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his

property. The replacement school must meet program expectations, per State requirements for the replacement of a school that was constructed in the 1950s. Although all efforts have been taken to avoid specimen trees, complete avoidance of the specimen trees is not feasible. For the purposes of this variance request, the location of the required limits of disturbance make impacts to specimen trees unavoidable, given the extent and locations of the CRZs within the LOD. Denying this variance request would deprive the owner of all beneficial use of the property; thus, this criterion is met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The general conditions of the neighborhood consist of multi-family and single-family residences and the school. The need for the variance arises from the unique circumstances of the locations of the specimen trees on the site and the location of the site design requirements. Adjusting the LOD to minimize or avoid impacts to the trees is not possible due to the requirements of the overall project. The petitioner has shown that his/her plight is due to these unique circumstances, and not from general conditions of the neighborhood, therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The proposed development activity is to replace a school (on the same site) that has been in the neighborhood for approximately 60 years. This will not alter the essential character of the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The removal of the specimen trees will not impact forest habitat (which is not found on site), wetlands, streams, or water quality. No impacts are proposed to Bread and Cheese Creek or its buffer. Furthermore, sediment control measures and stormwater management regulations will be addressed. This criterion is met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. The petitioner has not taken any action necessitating this variance request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Specimen trees are considered high priority for retention and all efforts have been made to avoid impacts to these resources, however, site design requirements for the replacement of an existing school will result in unavoidable impacts to specimen trees. Mitigation for impacts to the 11 specimen trees in fair to good condition will be addressed by the payment of a fee-in-lieu of planting in the amount of \$11,013.46. Mitigation to satisfy the afforestation requirement of 2.2-acres will be addressed by the payment of a fee-in-

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lieu of planting for 1 acre, in the amount of \$21,780.00, at a rate of \$0.50 per square foot, and on site planting for 1.2-acres of credit. Therefore, this criterion is met.

Based upon our review, this Department finds that the required variance criteria have been met. Therefore, the variance request is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code contingent upon the following:

1. A Forest Conservation Plan (FCP) mylar must be approved prior to the issuance of any permit. On site afforestation planting must be completed, as stipulated on the approved FCP.
2. Fees-in-lieu for specimen tree removal and afforestation must be paid prior to the issuance of any permit.
3. An Environmental Agreement is required, and the onsite planting is subject to its monitoring and inspection requirements.
4. The following note must appear on all plans for this project, including the final Forest Conservation Plan, that states: "A Forest Conservation Variance was granted by Baltimore County DEPS to allow the removal of 12 specimen trees. Mitigation was addressed by the payment of a fee-in-lieu of planting in the amount of \$11,013.46, for the removal of 11 specimen trees in fair to good condition. No mitigation was required for 1 specimen tree in poor condition."

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

If you have any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL:tcp

c: Marion Honeczy-DNR